IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn. No.699 of 1994
Date of Decision: November 28th, 2007

Ashok Kumar

...Petitioner

Versus

State of Punjab

…Respondent

CORAM: HON'BLE MR. JUSTICE HARBANS LAL

Present: Mr.Narinder Singh, Advocate
for the petitioner.

Mr.Antar Singh Brar, Deputy Advocate General, Punjab

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Harbans Lal, J.

This revision has been directed against the judgment/order dated 29th July, 1992 rendered by the Court of learned Sub Divisional Judicial Magistrate, Muktsar, whereby he convicted and sentenced the accused/ petitioner to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default thereof to further undergo rigorous imprisonment for a period of two months under Section 304-A of the IPC and further sentenced him to undergo rigorous imprisonment for a period of six months under Section 338 of the IPC with a direction that both the sentences shall run concurrently as well as the judgment dated 18th October, 1994 rendered by the Court of learned Additional Sessions Judge, Faridkot whereby he dismissed the appeal.

The facts in brief of the prosecution case are that Kundan Singh

PW made his statement Ex.PA before the police stating therein that on 2nd February, 1990 he alongwith Baldev Singh driver of the tractor bearing registration No. PAD-8672 and his brother Ghula sitting in the trolley were returning from Muktsar after making purchases of household articles. At about 5.30 PM when they were at a distance of 1½ furlong from village Rahurianwali, a bus bearing registration No. PUW-8467 came from Muktsar side at a very fast speed and struck against the trolley of their tractor. As a result of its impact, the tractor turned turtle and hook of the trolley got broken. The bus got down from the road and moved towards the west. The complainant and Baldev Singh came under the tractor. On being raised alarm by Ghula, people amassed there. They rescued them by lifting the tractor. They both were removed by Ghula to Civil Hospital, Muktsar where they were medico-legally examined. The condition of Baldev Singh being serious, he was referred to Medical College, Faridkot. SI Kuldip Singh PW5 on receipt of intimation regarding the admission of the injured in the aforementioned hospital, went there and recorded the statement Ex.PA. On its basis, formal FIR Ex.PA/1 was recorded. He took up the investigation, reached the spot, prepared the rough site plan and seized the bus as well as the tractor vide recovery memos. Baldev Singh succumbed to his injuries in Medical College, Faridkot. The Investigating Officer prepared the inquest report and got the autopsy performed on the dead body. On completion of investigation, the charge sheet was laid in the Court of Illaqa Magistrate for trial of the accused.

The accused was charged under Sections 279, 304-A and 338 of IPC to which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution examined Chanan Ram PW1, Dr.SS Toor PW2, Dr.JS Dalal PW3, Balbir Singh Mechanic PW4, Kuldip Singh Sub Inspector PW5, Kundan Singh complainant PW6 and Gurdev Singh PW7. When examined under Section 313 Cr.P.C., accused denied all the incriminating circumstances appearing in the prosecution evidence against him. He has taken up the plea that the driver of the tractor was untrained and there was play in the steering and king pin of the tractor which was going in a zig-zag manner and not under the control of the driver on the wrong side and that under such compulsive situation, his bus struck against the back of the trolley and that in his effort to save the lives of 40-50 passengers travelling in his bus, he took the bus down the road towards the fields. In his defence, the accused examined Tejinder Singh DW1 and Gulshan Kumar DW2.

I have heard the learned counsel for the parties and perused the record with due care and circumspection.

Mr. Narinder Singh, Advocate representing the petitioner has submitted with full force that it is abundantly clear from the circumstances of the case that the accused/petitioner in a bid to save the situation took the bus towards the extreme right but despite that he could not help hitting the right rear corner of the trolley and the tractor driver/deceased was untrained and more so, there was play in the steering of the tractor and that being so, the accident in fact took place due to deceased's negligence.

To controvert this submission, Mr. Antar Singh Brar, Deputy Advocate General, Punjab contended that the petitioner had seen the tractor going ahead from a long distance and thus, it was incumbent upon him to

have slowed down the speed of the bus to avert the accident and by not doing so, the rashness or negligence is clearly attributable to him.

I have well considered the rival contentions. At the very outset, it deserves to be pointed out here that the accident, time, place and date of the accident have been admitted by the defence. The core question to be determined herein is as to whether the tractor driver or the bus driver was rash or negligent at the material time. As per prosecution story, the bus was coming behind the tractor-trolley. If in the visual observation of the petitioner, the tractor was moving in whirl motion, he had opportunity to avert the accident by slacking the speed of the bus. It is matter of common knowledge that the steering wheels of heavy vehicles are provided larger play for smooth driving and negotiation as compared to smaller vehicles. Moreover, on reading between the lines, it follows from the statements of Kundan Singh PW6 and Gurdev Singh PW7, that one half of the tractor was on the kacha berm and the other half was on the metalled portion of the road and the tractor was moving at a very normal speed. The petitioner was coming from behind by driving the bus, so, he should have eschewed to overtake the tractor if in his estimation the tractor was not moving in a smooth manner. Because he failed to avert the accident by taking precaution of slowing down the speed of the bus, the rashness has been rightly attributed to him by the Courts below. As regards the defence evidence, Tejinder Singh DW1 claims to have carried the injured in his Maruti car from the place of the accident on 5th February, 1990 whereas the accident took place on 2nd February, 1990. Further, Gulshan Kumar DW2 has stated that the occurrence took place in May, 1992 whereas the

prosecution case is that the accident occurred on 2nd February, 1990. So, their evidence is unacceptable and has been rightly rejected by the Courts below. Sequelly, the conviction calls for no interference.

Mr. Narinder Singh, Advocate realising that he is unable to persuade this Court to take a contrary view to the evidence appreciated by the Courts below made a misericordious submission that this incident being 17 years old and the petitioner never misused the bail admitted by this Court, he may be released on probation.

On the other hand, Mr. Brar, pressed into service that the petitioner does not deserve any sympathy in the matter of sentence being a criminal on wheels. I have given a deep and thoughtful consideration to these submissions. As would be apparent from the postmortem report, the deceased Baldev Singh was 35 years of age at the time of accident. His life snuffed in a jiffy because of rashness on the part of the petitioner. Only his heirs know the pinch of the loss of his life.

To my mind, it will lead to miscarriage of justice and the conscience of the kiths and kins of the deceased would be shocked, if the petitioner is released on probation. It has been authoritatively pronounced by the Apex Court that the persons on the wheels have great responsibilities while driving the heavy vehicles on the roads. Survivors and family members are affected not only by an immediate death or disability, but also life time psychological and physical sufferings. Keeping in view the facts and circumstances of the case, I do not deem it expedient to bestow the benefit of probation on the petitioner. However, taking into consideration the fact that he has all along been facing the agony of trial since 1990, there

is a scope for reduction in the sentence. So, the sentence is reduced to six months under Section 304-A IPC while maintaining the fine imposed by the learned trial court as well as its default clause and the sentence imposed under Section 338 of the IPC is reduced to three months. The substantive sentences shall run concurrently. Accordingly, this revision is disposed off.

November 28th, 2007 (Harbans Lal)
gsv Judge

Whether to be referred to the Reporter ? Yes/No